IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1924 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

THAKKAR SURESHKUMAR AMRATLAL - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

==========

Appearance :
MR HR PRAJAPATI for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 3.

==========

CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 10/10/2007

ORAL JUDGMENT

1. The petitioner is a licensee for running a fair price

shop at village Jakhel, Taluka : Sami, District : Mahesana. His shop came to be inspected on 14.9.1994 by the authority and having noticed certain irregularities, show cause notice came to be served on him on 1.10.1994 calling upon him to show cause why his licence should not be cancelled and deposited amount should not be forfeited. The allegations against the petitioner in the show cause notice were multi-fold, one being that there was deficit of 10 kg., in rice stock and stock of 20 kg., in wheat stock found upon physical verification. Second ground was that there were no entries in the stock register from 12.9.1994 till 16.9.1994 when it was inspected. The petitioner had lifted the stock of 40 quintal wheat and 10 quintal rice on 3.9.1994 which were not credited in the stock register nor was it found in the physical stock. A truck carrying the said stock which was lifted from Sami godown on 3.9.1994 bearing No.GQD 4546 came to be seized by Harij police and therefore, it is the allegation that stock was illegally diverted. It was also the charge that on 12.9.1994, though there was no wheat received, 20 quintal wheat were credited in the stock register.

2. The petitioner gave reply broadly explaining that when the truck was being brought after lifting the stock from Sami, the owner-cum-driver of the truck fell sick and he, therefore, went to his home informing the petitioner that he would send a truck and stock through his driver but unfortunately, the driver-cum-owner of the truck was intercepted by Harij police and seizure took place beside the prosecution of the owner-cum-driver for the offence under Sections 3 and 7 of the Essential Commodities Act. The respondent – authorities did not accept explanation and

decided to cancel licence of the petitioner. The petitioner, therefore, challenged the order in appeal before the Collector, Mahesana. The appeal came to be dismissed. The petitioner, therefore, approached the Government by preferring the revision which also came to be rejected. The petitioner has, therefore, approached this Court with this petition under Article 226 of the Constitution of India making the following prayers :

> (a) Your Lordships be pleased to issue a writ of certiorari or any other appropriate writ, order or direction and be pleased to quash and set aside the impugned order dated 27.2.96 passed by the respondent no.1 in Revision Application No.135/94 by which the impugned order of the respondent no.2 dated 10.9.95 was confirmed by the respondent no.1 passed in Appeal No.39/94 and also the order of the respondent no.3 dated 27.10.94, as being illegal, arbitrary, invalid, capricious, unjust, unfair, violative of principles of natural justice and violative of Articles 14, 19 and 21 of the Constitution of India;
>
> (b) Your Lordships will be pleased to stay the operation, implementation and execution of the impugned order dated 27.2.96 passed by the respondent no.1 in Revision Application No.135/94 by which the impugned order of the respondent no.2 dated 10.9.95 was confirmed by the respondent no.1 passed in Appeal No.39/94 and also the order of the respondent no.3 dated 27.10.94 pending admission, hearing and final disposal of this petition;
>
> (c) Your Lordships be pleased to grant such other and further reliefs as are deemed just and proper in the facts and circumstances of the present case.

2.1. The petition came to be admitted and ad-interim protection came to be granted by this Court.

3. I have heard learned advocate Mr.H.R.Prajapati for the petitioner and learned A.G.P.,Ms.Varsha Brahmbhatt for the respondent authorities. Mr.Prajapati's main contention is that in Appeal No.7 of 1995 under the Gujarat Essential Articles (Licensee, Control and Stock Declaration) Order, 1981, the Government has taken a view that factum of unauthorized disposal of the stock by the petitioner was not properly proved for want of cogent evidence. Therefore, two different authorities of the Government have taken two different views and therefore, the matter requires reconsideration by the authority concerned. The matter may, therefore, be remanded to the State Government after quashing and setting aside the order impugned. He has relied on the decision in the case of Suresh J Thakkar V/s State of Gujarat in Special Civil Application No.7402 of 1996 dated 14.9.2007 involving the same incident in respect of the stock of other fair price shop owner.

4. Learned AGP Ms.Varsha Brahmbhatt submitted that the petitioner's shop is at Jakhel of Sami Taluka, whereas the truck was found by the police at Harij which is a different Taluka place and there was no legitimate occasion for the truck to be taken there, the order is, therefore, just and proper.

4.1 Learned AGP, however, on instruction from the respondent authorities and on verification of the files conceded to the fact that by order dated 19.4.1997 in Appeal No.7 of 1995 under the Gujarat Essential Articles (Licensee, Control and Stock Declaration) Order, 1981 a view was taken by the Deputy Secretary, Food & Civil Supplies of State that there was no cogent evidence to show that the petitioner had tried to

illegally or unauthorizedly disposed of the stock or that had committed any material irregularities. She also conceded to the situation that similar order was passed in Appeal No.8 of 1995 relating to Sureshkumar J.Thakkar on 10.4.1997 by the same authority in respect of the same transaction relating to another fair price licencee i.e. Sureshkumar Jayantilal Thakkar.

5. The fact that emerges, therefore, is that the petitioner is similarly situated to Sureshkumar Janantilal Thakkar and this Court after considering two orders came to the conclusion that the order impugned in the petition deserves to be quashed and set aside and the proceedings deserve to be remanded to the revisional authority for decision in accordance with law bearing in mind the observations made in the order and granting continuance of interim protection enjoyed by the petitioner till the revisional authority takes the decision afresh.

6. This petition is, therefore, allowed only on above grounds without entering into the merits. The order passed by the State Government in Revision Application No.135 of 1994 on 27.2.1996 is hereby quashed and set aside. The proceedings are remanded to the revisional authority for decision in accordance with law. The interim protection enjoyed by the petitioner shall continue to operate till the revisional authority takes a decision afresh. Rule is made absolute accordingly with no order as to costs.

(A.L.Dave,J)

pathan